IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.5344 OF 2005

Lalit Somdutta Nagpal ...Applicant
Vs.
The State of Maharashtra ...Respondent

Shri. A. H. Solkar for the Applicant.
Shri. S.R. Borulkar, Public Prosecutor with
Rajshree Gadhvi, A.P.P. for the Respondent.

CORAM : A. S. OKA, J.
DATE : SEPTEMBER 08, 2005.

P.C.:

1. Heard the Advocate appearing for the Applicant and the Public Prosecutor for the State.

2. The offence registered against the Applicant is of a very serious nature. The offence registered against the Applicant and another co-accused is under sections 465, 467, 468, 471, 474, 420 read with section 34 of the Indian Penal Code and section 3 and 7 of the Essential Commodities Act.

3. The learned Advocate appearing for the Applicant submitted that the chargesheet is filed long back and the Applicant is in custody from 01st July, 2005. He submitted that there was no specific direction given by the Apex Court directing the Applicant to surrender within a period of two weeks. He submitted that the Applicant was persuing his legal remedies after the order was passed by the Apex Court and therefore, he did not surrender immediately. He

pointed out that the co-accused have been enlarged on bail . He also pointed out observation made by the learned Magistrate while deciding application of the co-accused that offence registered against the Applicant is triable by Court of Judicial Magistrate, First Class and trial will take long time to conclude. He submitted that the chargesheet discloses that the Applicant has played no role in the offence. He submitted that in case of other offences registered against the Applicant, he has been ordered to be enlarged on bail. He pointed out that provisions of the Maharashtra Control of Organised Crimes Act, 1999 were applied in the present offence and the Division Bench of this Court by judgment and order dated 11th March, 2005 has quashed the order dated 31st October, 2004 under section 23(i)(a) of the Maharashtra Control of Organised Crimes Act, 1999. He submitted that after investigation is completed, the Applicant deserves to be enlarged on bail.

4. The learned Public Prosecutor pointed out that the Applicant did not surrender for a period of more than six months after the order of the Apex Court denying the Anticipatory Bail to him. He pointed out that the Applicant has criminal antecedents and in another case provisions of the Maharashtra Control of Organised Crimes Act, 1999 have been applied against the Applicant. Relying upon the statement of one of

the witnesses Jagdish Parab recorded under section 164 of the Code of Criminal Procedure, 1973, he submitted that the Applicant is the main culprit in the entire offence and he is involved in large scale activities of adulteration of Petroleum Products. He pointed out the allegations made against the Applicant.

5. I have considered the submissions made by the counsel appearing for the parties. The allegations made against the Applicant and the co-accused is as regards the adulteration of Petroleum Products and sale thereof, fabrication of documents etc. The Applicant applied for Anticipatory Bail to this Court which came to be rejected. The order passed by this Court was challenged by the Petitioner by filing the Special Leave Petition in the Apex Court. The Apex Court by order dated 14th December, 2004 rejected the prayer made by the Applicant for grant of Anticipatory Bail by observing that looking to the material placed on record, primafacie, it cannot be said that this court committed any error in rejecting the Application for Anticipatory Bail. As it was stated that the Applicant had attended the Police Station on various dates, the Apex Court granted fifteen days time to the Applicant to surrender by directing the Police not to arrest the Applicant for a period of two weeks. The Apex Court observed that after the Applicant surrenders, he can apply for Regular Bail which will

be decided uninfluenced by the observations made by this Court or the Apex Court.

6. On plain reading of the order passed by the Apex Court, it is apparent that the prayer made by the Applicant for grant of Anticipatory Bail was rejected on merits. The Applicant could not have been arrested immediatedly as the Apex Court granted time of fifteen days in favour of the Applicant to surrender. In view of the order of the Apex Court, the Applicant was duty bound to surrender within the time granted by the Apex Court. However, he surrenderred six months after the time granted to him expired. The Applicant availed of the benefit of order passed by the Apex Court, but, did not surrender till 01st July, 2005. The time granted by the Apex Court to the Applicant to surrender expired on 28th December, 2004. The explanation of the Advocate appearing for the Applicant that in the meanwhile, the Applicant prosecuted his legal remedies cannot be accepted. The Division Bench decided the Writ Petition on 11th March, 2005. Even after that decision, the Applicant did not surrender for a period of three months. It is stated that the Applicant has filed Petition in this Court challenging the F.I.R. There is nothing on record to show that though the said Petition is pending, this Court granted any protection to the Applicant. Thus, it is apparent that the Applicant

committed breach of the orders of the Apex Court by not surrendering on or before 28th December, 2004.

7. The co-accused have been ordered to be enlarged on bail. Apart from the fact that the role played by the Applicant appears to be different, while considering the claim for parity conduct which is peculiar to the Applicant has to be considered. In the present case, the conduct of the Applicant shows defiance on his part in compliance with the orders of the Apex Court. If the Applicant has breached the order of the Apex Court with impunity, there is some merit in the apprehension expressed by the Investigating Officer about the conduct of the Applicant after he is enlarged on bail.

8. Though in some of the other offences registered against the Applicant is either acquitted or enlarged on bail, fact remains that there are criminal antecedents of the Applicant. Presence of such antecedents is also a factor which is required to be considered for grant of bail.

9. No doubt, the learned Magistrate has prima facie observed that trial may not be concluded within a period of short time. The maximum punishment for the offence under section 467 of the Indian Penal Code is imprisonment for life. Considering the conduct of

the Applicant there is no ground to enlarge the Applicant on bail. Application is rejected.

JUDGE